INDEX

	Page
PETITION FOR WRIT OF CERTIORARI	1-10
Opinions—Below	1-2
Statement as to Jurisdiction	2
Question Presented for Review	2
Statement of the Case	3-5
Argument	6-10

INDEX OF CITATIONS

	Page
Alaska Packers Assoc. vs. Commission, 294 U.S. 532	6, 8, 9
Arkansas Compensation Act, Statute, 1947, 18-103	8
Baldwin Company vs. Maner, 273 S.W. 2d, 28	8
Bradford Electric Co. vs. Clapper, 286 U.S. 145	6, 8
Carroll vs. Lanza, 349 U.S. 408	2, 6, 7, 8, 9, 10
Constitution of the United States, Article 4, Section 1	4
Magnolia Petroleum Co. vs. Hunt, 320 U.S. 430	7
McKinneys Consolidated Laws of New York, Vol. 64, Section 29	4
Michigan Compiled Laws of 1948, Section 413.14	4
Pacific Insurance Co. vs. Industrial Commission, 360 U.S. 493	6, 8, 9
United States Code Annotated, Title 28, Section 1738	4

In The

SUPREME COURT OF THE UNITED STATES

—o—

OCTOBER 1956 TERM

—o—

No. ————————

—o—

SAMUEL E. STEELE,
Petitioner,

vs.

CHARLOTTE D. SHEERIN,
Administratrix of the Estate
of William James Sheerin,
Deceased,
Respondent.

—o—

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

—o—

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

OPINIONS—BELOW

Sheerin vs. Steele (No. 12,887, United States of Appeals for the Sixth Circuit, January 31, 1957) Nine copies of the

opinion dated January 31, 1957 are filed as part of the printed record with this Petition.

Sheerin vs. Steele (D. C E. D. Michigan, decided March 12, 1956) Nine copies are filed as part of the printed record included with this Petition.

STATEMENT AS TO JURISDICTION

The date of the Judgment sought to be reviewed and date of entry of Judgment is January 31, 1957.

The Statute believed to confer jurisdiction to review by certiorari is based on Title 28, Section 1254 United States Code.

QUESTION PRESENTED FOR REVIEW

The principal question of law to be considered in this case is whether the United States Court of Appeals decided this case in conflict with an applicable decision of the United States Supreme Court. It is the contention of the Petitioner that in this case the United States Court of Appeals misconstrued and misapplied the ruling of the United States Supreme Court's holding in the case of *Carroll vs. Lanza,* 349 U.S. 408. The District Court properly held that the action was barred by the New York Workmen's Compensation Act under the full faith and credit clause of the Federal Constitution. The United States Court of Appeals, in misconstruing and misapplying the United States Supreme Court's ruling of *Carroll vs. Lanza,* 349 U.S. 408, decided that the present action was not barred, and in substance held that the respondent could maintain the present action.

STATEMENT OF THE CASE

Petitioner on March 25, 1954 was an employee of A. P. Parts Corporation, an Ohio Corporation. Respondent's husband, William James Sheerin, was hired by A. P. Parts Corporation on March 15, 1954. He entered into a written agreement in Ohio pursuant to the Workmen's Compensation Act of Ohio whereby he and his employer agreed to be bound by the Workmen's Compensation Laws of New York and also agreed that the rights of his dependents would be covered by the Laws of New York (17 to 21).

On March 25, 1954 respondent's husband was a passenger in Petitioner's vehicle. Both respondent's husband and Petitioner were acting in the scope and course of their employment with the A. P. Parts Corporation at the time that Petitioner's vehicle became involved in an accident with a railroad train. Respondent's husband was killed as a result of the accident (26).

Respondent made a claim for Workmen's compensation benefits under the New York Act and a final award made by the Workmen's Compensation Commission directing the A. P. Parts Corporation to pay the respondent funeral expenses and weekly benefits (22 to 23).

Respondent's complaint in the District Court alleges that she is a resident of the State of New York; that on April 22, 1954 she was appointed administratrix of the Estate of her deceased husband, William James Sheerin; that on March 25, 1954 William James Sheerin was a passenger in an automobile operated by petitioner Samuel E. Steele and that said vehicle became involved in an accident with a railroad train in the State of Michigan. The answer by

Petitioner admits that the accident occurred and sets up the following special defenses:

1. That respondent's decedent accepted the New York Compensation Law by filing with the State of Ohio its form E-112 providing that he would be governed by the Laws of the State of New York.

2. That respondent is barred from maintaining this action by virtue of McKinney's Consolidated Laws of the State of New York, Volume 64, Section 29 which reads as follows:

   "#6. The right to compensation or benefits under this Chapter, shall be the exclusive remedy to an employee, or in the case of death his dependents, when such employee is injured or killed by the negligence or wrong of another in the same employ."

3. That under Article IV, Section I. Constitution of the United States and Section 1738 of Title 28, United States Annotated full faith and credit should be extended to the Laws of the State of New York and that such Laws govern and control the present action.

4. That under Section 413.15 Compiled Laws of Michigan, 1948, as amended respondent is barred from bringing this action because of the terms of the Act which reads as follows:

   "Where the injury for which compensation is payable under this Act is caused under circumstances creating a legal liability IN SOME PERSON OTHER THAN A NATURAL PERSON IN THE SAME EMPLOY or the employer to pay damages in respect thereof, the acceptance of compensation benefits or the taking of proceedings to enforce compensation benefits shall not act as an election of remedies, but such injured employee or his dependents or their personal representatives may also

proceed to enforce the liability of such third party for damages in accordance with the provisions of this section." (6 to 13)

Petitioner filed a motion for summary judgment on October 11, 1955, and the motion was granted by the District Court on March 12, 1956 (26 to 33). Appeal was taken to the United States Court of Appeals for the Sixth Circuit and Judgment was entered on January 31, 1957 reversing the Summary Judgment entered by the District Court (35).

ARGUMENT

The United States Court of Appeals for the Sixth Circuit has decided an important question of law in a manner that is in direct conflict with rules laid down by this Court in the cases of: *Bradford Electric Company vs. Clapper*, 286 U.S. 145; *Alaska Packers Association vs. Commission*, 294 U.S. 532; *Pacific Insurance Company vs. Industrial Commission*, 306 U.S. 493 and *Carroll vs. Lanza*, 349 U.S. 408.

The Workmen's Compensation Law for the State of New York specifically and unequivocally denies an employee or his dependents the right to sue a fellow employee for negligent injuries or death.

The Workmen's Compensation Law for the State of Michigan denies the right of an employee to sue a co-employee for negligent injuries or death where the injured employee or his dependents have accepted the benefits of the Workmen's Compensation Act.

The Laws of the State of Michigan and New York are not repugnant to each other and in fact, are identical. Section 29, New York Compensation Act and Section 413.15, Compiled Laws of Michigan of 1948.

In the instant case it affirmatively appears that respondent accepted the benefits of the New York compensation Act and that she could have had benefits under the Michigan Act if she so desired.

The opinion of the United States Court of Appeals in reversing the Summary Judgment in favor of Petitioner is based on the following:

"The dissenting opinion, concurred in by three

Justices, seems to construe the ruling, as do we, as going beyond the theory of balancing the societal interests of the forum State against those of a sister State and in treating the occurrence of the injury within the State of the forum, without more, as being a sufficient interest of the State of the forum to override the interest of the sister State, and in so doing impliedly, though not expressly, overruling the CLAPPER ruling. U.S. 349, 420-422."

A review of the factual situation in our present case and the factual situation in *Carroll vs. Lanza,* shows that *Carroll vs. Lanza* stands for the proposition that in the present case the respondent is barred from maintaining her action.

In *Magnolia Petroleum Company vs. Hunt,* 320 U.S. 430, this Court held that where an employee received a final award for compensation in the forum of the injury he could not return to the Home State and recover under its Compensation Act. The employee was barred by the full faith and credit clause.

In our present situation the respondent has received a final award under the New York Workmen's Compensation Act and now should be barred by the full faith and credit clause from coming into the State of the injury and recovering against a co-employee of her deceased husband (22 to 23).

The Laws of New York and Michigan relative to actions by injured employees against co-employees are identical in result. The New York Statute specifically forbids such lawsuits. The Michigan Statute, as amended in 1952, says that where the injury for which compensation is payable under this Act is caused under circumstances creating a legal liability in some person other than a natural person in the same employ or the employer that

than the injured employee can sue the third party for damages.

In *Carroll vs. Lanza* it is stated that under the Arkansas Compensation Act: Arkansas Statute 1947, 81-103, the employee's only remedy against the employer is to accept compensation. Further, that the employee has an action against the third party. A general contractor, under the Arkansas Law is a third party within the meaning of the Act. *Baldwin Company vs. Maner*, 273 S.W. 2d, 28.

Under both the Michigan Act and the New York Act, a co-employee is not a third party Therefore the United States Court of Appeals has misconstrued the holding of *Carroll vs. Lanza*, when it says that the present suit may be maintained.

If there was any conflict between the New York Compensation Act and the Michigan Compensation Act it would be agreed that under the ruling of this Court in *Bradford Electric Company vs. Clapper*, 286 U.S. 145; *Alaska Packers Association vs. Commission*, 290 U.S. 532; *Pacific Insurance Company vs. Industrial Commission*, 306 U.S. 493 and *Carroll vs. Lanza*, 349 U.S. 408, that Michigan would not and should not be compelled to give full faith and credit to the New York Act

However, where the Acts are identical in intent and purpose and almost identical in wording, then under all of the above cited cases the New York Act should and must be given full faith and credit

In *Bradford Electric Company vs. Clapper*, at page 159 this Court said:

> "That the full faith and credit clause does not require New Hampshire to enforce an act of another State which is obnoxious to its Public Policy."

In *Alaska Packers Association vs. Commission*, 294 U.S. 532, at page 546, this Court said:

> "It has often been recognized by the Court that there are some limitations upon the extent to which a State will be required by the full faith and credit clause to enforce even the judgment of another State. In contravention of its own Statutes or Public Policy. * * *."

In *Pacific Employers Insurance Company vs. Industrial Accident Commission*, 306 U.S. 493, this Court said at page 501-4:

> "Here California legislation not only conflicts with that of Massachusetts providing compensation for Massuchusetts employees if entered within the State of California, but it expressly provides, for the guidance of its own Commission and Courts, that no contract rule or regulation shall exempt the employer from liability for the compensation fixed for this Act. Full faith and credit does not here enable one State to legislate for the other or to project its Laws across State Lines so as to preclude the other from prescribing for itself the legal consequences of Acts within it."

In *Carroll vs. Lanza*, 349 U.S. 408, this Court said at page 413:

> "Missouri can make her compensation act exclusive, if she chooses, and enforce it as she pleases within her borders. Once that policy is extended into other States, different considerations come into play. Arkansas can adopt Missouri's policy if she likes. Or, as the *Pacific Employers Insurance Company Case* teaches, she may supplement it or displace it with another insofar as remedies for acts occurring within her boundary lines are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safe guards to nonresidents employees working within its borders. We do not think the full faith and credit clause demands that subserviency from the State of the injury."

Under the rulings of this Court full faith and credit must be given to the New York Workmen's Compensation Act in the present case. The respondent has accepted a final award in the State of New York; the New York and Michigan Statutes involved specifically prohibits an action by an employee against a co-employee and both Statutes hold that a co-employee is not a third party. To paraphrase *Carroll vs. Lanza* "Michigan has adopted the policy of New York".

Wherefore, Petitioner prays that a writ of certiorari issue under the seal of this Court directed to the United States Court of Appeals for the Sixth Circuit commanding said Court to certify and send this Court a full and complete transcript of the record and of the proceedings of the said United States Court of Appeals had in the case numbered and entitled on its docket #12,887, *Sheerin, Appellant vs. Steele, Appellee* to the end that said cause may be reviewed and determined by this Court as provided for by the Statutes of the United States and the Judgment herein of the said United States Court of Appeals be reversed by this Court and for such further relief as this Court may deem proper.

Dated: March 11, 1957.

SAMUEL E. STEELE,
Petitioner,

By: G. CAMERON BUCHANAN,
RICHARD ALAN HARVEY,
His Attorneys.

.....,
G. Cameron Buchanan,

.....,
Richard Alan Harvey,

Attorneys for Petitioner,
2217 National Bank Building,
Detroit 26, Michigan.

INDEX OF CITATIONS

	Page
Alaska Packers Asso. v. Industrial Acci. Comm., 294 U. S. 532	3
Bradford Electric Co. v. Clapper, 286 U. S. 145	3
Carroll v. Lanza, 349 U. S. 408	1, 2
Magnolia Petroleum Co. v. Hunt, 320 U. S. 430	4

IN THE

Supreme Court of the United States

OCTOBER 1956 TERM

No. 850

SAMUEL E. STEELE,
Petitioner,
vs.
CHARLOTTE D. SHEERIN, Administratrix of the Estate of William James Sheerin, Deceased,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT

Petitioner asks this Court to review the decision of the Court of Appeals on the basis that the Court of Appeals misconstrued and misapplied the decision of the United States Supreme Court in *Carroll v. Lanza*, 349 U. S. 408. The United States Court of Appeals for the Sixth Circuit correctly held that the instant case was controlled by the

decision of the United States Supreme Court in *Carroll v. Lanza.* It properly construed, properly applied and properly followed the principles enumerated in that decision, that the forum in which an injury occurs has a sufficient interest in the injury or death of an employee within its borders to apply its own laws with respect to such employee's recovery rather than the workmen's compensation act of a sister state. As this Court stated in *Carroll v. Lanza:*

> "Were it otherwise, the State where the injury occurred would be powerless to provide any remeries or safeguards to non-residents employees working within its borders. We do not think the full faith and credit clause demands that subserviency from the State of the injury."

In *Carroll v. Lanza,* the plaintiff, Carroll, a resident of Missouri, was hired in Missouri by a Missouri concern. He was injured while working in Arkansas where his employer, a subcontractor, was doing work for Lanza, the principal contractor. Carroll was paid compensation for 34 weeks under the Missouri Workmen's Compensation Act. The Missouri Act provided that it was applicable to injuries received outside the state if the contract of employment were made in Missouri. The Missouri Compensation Act provided that it should be the exclusive remedy of the employee both against his immediate employer and the principal contractor. Thereafter Carroll brought a common law action in Arkansas against Lanza, the principal contractor, for Lanza's negligence and a judgment was rendered in favor of the injured Carroll against Lanza, the principal contractor. On appeal to the United States Court of Appeals for the Eighth Circuit the judgment for plaintiff was reversed "on the ground that the Full Faith and Credit Clause of the Constitution (Art. 4, Sec. 1) barred recovery." The United

States Supreme Court granted certiorari, reversed the decision of the Court of Appeals and affirmed the trial court's judgment for the plaintiff Carroll. The Court after discussing *Bradford Electric Co. v. Clapper*, 286 U. S. 145 and *Alaska Packers Asso. v. Industrial Acci. Comm.*, 294 U. S. 532, held that "*Pacific Employers Ins. Co. v. Industrial Acci. Com.*, 306 U. S. 493, 83 L. ed. 940, 59 S. Ct. 629, departed however from the Clapper decision" • • • "The Pacific Employers Ins. Co. case allowed the Compensation Act of the place of injury to override the Compensation Act of the home state."

The Supreme Court then held that the common law remedy of the place of injury may likewise override the compensation act of the home state. The court said (continuing):

> "Here it is a common-law action that is asserted against the exclusiveness of the remedy of the home State; and that is seized on as marking a difference. That is not in our judgment a material difference. Whatever deprives the remedy of the home State of its exclusive character qualifies or contravenes the policy of that State and denies it full faith and credit if full faith and credit is due. But the Pacific Employers Ins. Co. Case teaches that in these personal injury cases the State where the injury occurs need not be a vassal to the home State and allow only that remedy which the home State has marked as the exclusive one. The State of the forum also has interests to serve and to protect. Here Arkansas has opened its courts to negligence suits against prime contractors, refusing to make relief by way of workmen's compensation the exclusive remedy. *Baldwin Co. v. Maner*, — Ark. —, 273 S. W. 2d 28, *supra*. Her interests are large and considerable and are to be weighed not only in the light of the facts of this case but by the kind of situation presented. For we write not only for this case and this day

alone, but for this type of case. The State where the tort occurs certainly has a concern in the problems following in the wake of the injury. The problems of medical care and of possible dependents are among these, as *Pacific Employers Inc. Co. v. Commission, supra,* emphasizes. Id. 306 U. S. at 501. A State that legislates concerning them is exercising traditional powers of sovereignty. Cf. *Watson v. Employers Liability Corp.,* 348 U. S. 66, 73, 99 L. ed. 74, 82, 75 S. Ct. 166. Arkansas therefore has a legitimate interest in opening her courts to suits of this nature, even though in this case Carroll's injury may have cast no burden on her or on her institutions."

In the instant case the respondent's husband was fatally injured in Michigan. Michigan where the tort occurred has a legitimate interest in opening Michigan courts to suits against third persons responsible for such injuries as the Court of Appeals correctly held.

The case of *Magnolia Petroleum Co. v. Hunt,* 320 U. S. 430 has no application to any matter in the instant case. That decision was based upon the principle of *res judicata* and held that an employee who received a final award of compensation against his employer in one state could not seek a second award in a second state against the same employer. There was no issue of *res judicata* in the instant case since the plaintiff below was not suing her husband's employer against whom she had received an award of compensation but rather was suing petitioner, a fellow employee responsible for her husband's death.

The Michigan and New York Workmen's Compensation Acts are not identical either in language or in results as petitioner claims on page 7 of his Petition for Certiorari. Certainly so long as the plaintiff did not receive compensation under the Michigan Compensation Act, and perhaps

even if she had, she was free to sue the petitioner, a fellow employee, under Michigan law. (See p. 43 record on petition for certiorari; opinion of the United States Court of Appeals in the instant case.)

Since the instant case involves issues which were fully considered by this Court in the recent case of *Carroll v. Lanza* and which were correctly applied by the Court of Appeals and no basis is even urged for review except the alleged erroneous application of those principles, the instant petition should be denied.

CHARLOTTE D. SHEERIN, Administratrix of the Estate of William James Sheerin, Deceased, Respondent,

By: JAMES A. MARKLE,
Her Attorney.

.....

JAMES A. MARKLE,
Attorney for Respondent,
2612 Buhl Building,
Detroit 26, Michigan.

Dated: April 4, 1957.